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**FISCAL YEAR 2005  
CHILD AND ADULT CARE FOOD PROGRAM  
OPERATIONAL MEMO #37**

TO: Child and Adult Care Food Program Institutions

FROM: Mary Ann Chartrand, Director  
Grants Coordination and School Support

DATE: August 23, 2005

SUBJECT: **CACFP Institution Overclaims – Assessing Interest**

This memo addresses a number of questions concerning the CACFP requirement that a State agency assess interest beginning with the State agency's initial demand for an institution's repayment of an overclaim. Some of these questions involve only Program policy, while others concern the actual accounting procedures that States and Regional Offices need to follow to report interest recoveries.

The following questions and answers on assessing interest were prepared by USDA's Child Nutrition Division.

**Question 1:** When must the State agency start to assess interest on new debts?

Answer: Interest must be assessed on debts established on or after July 29, 2002.

**Question 2:** If the State agency and institution agreed to a repayment plan before July 29, 2002, must the State agency start assessing interest on the unpaid portion of that repayment plan?

Answer: No.

**Question 3:** If an institution has not repaid a debt or agreed to a repayment plan and the State agency is currently pursuing that debt, should interest be assessed if the debt was established before July 29, 2002?

Answer: Yes, however, the State agency must restart the billing process. This means the State agency must issue a new billing letter that conforms to the requirements of the interim rule.

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If the institution was previously provided with the opportunity to appeal the overclaim and the State agency prevailed in that appeal or the institution did not exercise its right to appeal, a new right to appeal would not be offered. However, if the institution was not offered appeal rights, the new billing letter would provide the right to appeal the cause of the overclaim, but not the assessment of interest.

**Question 4:** As a follow-up to question 3, since failure to repay a debt now requires the State agency to initiate termination proceedings, shouldn't the State agency propose to terminate and disqualify the institution instead of issuing a new billing letter?

**Answer:** It depends on where the State agency is in the demand for repayment process. Question 3 deals with a situation where the State agency is still in the process of trying to recover funds, such as issuing one of the three demand for repayment letters required under 7 CFR Part 226.14. After the State agency has issued the three demand letters and full repayment or a repayment plan does not occur or before issuing all three letters, determines that issuing all three demand letters would be fruitless, the State agency must initiate the proposed termination and disqualification of the institution for failure to repay a debt, regardless of when the initial billing action occurred.

**Question 5:** Since there are a number of technical and policy questions about assessing interest, can we suspend implementation of this provision until after guidance is issued?

**Answer:** No. The assessment of interest on debts was not one specifically exempted from the July 29, 2002 implementation date.

**Question 6:** If a State agency or family day care home sponsor identifies a provider overclaim during a facility review does the sponsor assess interest on the provider owed debt?

**Answer:** No. The interim rule's debt recovery provisions result from the changes made by the Agriculture Risk Protection Act (ARPA). These changes apply only to institutions. When the State agency or sponsor identifies a provider overclaim during a facility review, the provider's debt would be immediately offset against its pending claim without offering the provider the right to appeal the recovery.

Since the offset is immediate, the need to assess interest for an unpaid debt is moot. A sponsor's right to immediately offset pending claims applies to all facilities, i.e., sponsored centers and day care homes.

**Question 7:** Can the State agency or sponsor charge the facility interest when the recovery of the facility's debt requires offsets to more than one claim or the facility is no longer participating in the CACFP?

Answer: No. The requirement to charge interest only applies to institution debt, not to facility debts.

**Question 8:** If the State agency determines the sponsor's claim editing system is inadequate and has resulted in facility overclaims, does the State agency assign the overclaim to the sponsor and assess interest or assign the overclaim to the facilities?

Answer: Since the overclaim results from the sponsor's failure to properly administer the program, the State agency would assess the overclaim against the sponsor, even though the sponsor would recover the funds from the providers.

**Question 9:** If the day care home provider's overclaim was assessed against the sponsor and interest accrued, can the sponsor recover the interest charges from the provider?

Answer: A day care home provider's overclaim should only be assessed against the sponsor when the State agency determines the sponsor has failed to act properly. For example, the State agency identifies a day care home provider overclaim during a review, but the sponsor refuses to pursue recovery of the overclaim. In this case, the State agency would properly assess the overclaim against the sponsor. Any interest that accrues on this debt is the sponsor's responsibility, not the provider's.

**Question 10:** Can CACFP funds be used to pay the accrued interest?

Answer: No. Nonfederal funds must be used to pay the accrued interest.

**Question 11:** Doesn't the current FM instruction for the CACFP already address interest on pages 94 - 96 (Section IX, D 6 b and 7)?

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Answer:           The interest discussed in this section of FNS Instruction 796-2, Rev. 3, is interest earned by institutions on Program funds, not interest owed by the institution for unpaid debts.

If you have questions, contact the CACFP at (517) 373-7391.